THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.E.N.PATRUDU

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W.P.NO.18613 of 2005

Dt.23.2.2006

Between:

Dr.S.Dayanand Rao … Petitioner

And

The Government of Andhra Pradesh, rep. by its

Secretary, Health Medical & Family Welfare Dept.,

A.P.Secretariat, Hyderabad and 2 others. … Respondents

ORDER: (Per Sri Justice M.E.N.Patrudu)

Aggrieved by the orders of the A.P.Administrative Tribunal in O.A.No.2371 of 2005, dt.20.7.2005, the petitioner has preferred this writ. The tribunal dismissed his prayer at the admission stage.

In short, the facts:

That the petitioner and the 3rd respondent are working as Superintendents in Government Homoeopathy Hospitals at Gudivada and Ramanthapur respectively. According to the petitioner and as admitted by all the respondents, the 3rd respondent is junior

tohim and his name is included below the petitioner in the seniority list published as on 7.10.2002.

The case of the petitioner is that out of 30 years of meritorious service rendered in the Department, he has served 23 years on non-teaching side, whereas the 3rd respondent has served only 12 years for non-teaching side. Therefore, he made a representation to the concerned authorities to consider his case for posting him in the Government Homoeopathy Hospital at Ramanthapur, Hyderabad.

The admitted fact is that the Government has issued G.O.Ms.No.69,dated 14.3.2005 wherein special rules called Andhra Pradesh Homoeopathy Medical Service Rules, 2005 were issued. As per the said special rules, Category-2(A), Class (b) relates to teaching cadre and Category-2(b) of Class-(b) is earmarked for non-teaching cadre post. Thereby two different categories are maintained.

The grievance of the writ petitioner is that he being the senior most having put up more than 30 years of service was posted in a non-teaching side for 23 years despite specific mandatory provisions in the special rules i.e., teaching cadre is totally separated from the non-teaching cadre. But the 3rd respondent who has put up about 12 years in non-teaching side is posted at Hyderabad in preference to him and in fact he is entitled to be considered for the post of Superintendent in the Government Homoeopathy Hospital at Hyderabad.

Heard the learned counsel for both sides.

Sri M.S.Prasad, learned counsel for the petitioner submits that as per the mandatory provisions stipulated in the special rules the petitioner being the senior most as per seniority list should have been considered having giving the same concession to the 3rd respondent.

The learned Government Pleader appearing on behalf of respondents 1 and 2 and the learned counsel appearing on behalf of the 3rd respondent could not give any convincing or satisfactory reply

for the discretion shown to the 3rd respondent and denying the same to the petitioner in not posting him to the post of Superintendent at Government Homoeopathy Hospital, Ramanthapur.

In the instant case the petitioner is retiring from service in February, 2007 and he also taking treatment to his injured leg. Hence, he made an application on 3.1.2005 to transfer him from Gudivada Hospital to Government Homoeopathy Hospital at Ramanthapur as Superintendent of the said Hospital is due to retire. But now the 3rd respondent is posted as Superintendent at Government Hospital at Ramanthapur which is a non-teaching post.

In the above circumstances, we are of the opinion that since 1st and 2nd respondents have considered the case of the 3rd respondent as per the rules framed in G.O.Ms.No.69 dated 14.3.2005 and the same rules are to be considered in case of the petitioner. Accordingly, direction is given to the 1st and 2nd respondents to consider the request of the petitioner also strictly in terms of G.O.Ms.No.69 dated 14.3.2005. Accordingly, 1st and 2nd respondents are directed to consider the seniority of the petitioner along with the surrounding circumstances and issue necessary orders as per rules issued in G.O.Ms.No.69.

With these directions, the writ petition is disposed of. No order as to costs.

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(J.CHELAMESWAR, J.)

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(M.E.N.PATRUDU, J.)

23-2-2006

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